

11-1392
SALESPERSON LICENSE
TAX YEAR: 2011
SIGNED: 06-21-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-1392</p> <p>Tax Type: Salesperson License Tax Year: 2011</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, Assistant Director, Motor Vehicle Enforcement
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 7, 2011 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner ("Applicant") is appealing the denial of a salesperson license to sell motor vehicles by the Respondent ("Division").

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2), as follows in relevant part:

- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:

. . .

- (vi) making a false statement on any application of a license under this chapter or for special license plates;
- (vii) a violation of any state or federal law involving motor vehicles;
- (viii) a violation of any state or federal law involving controlled substances;
- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;
- (x) a violation of any state or federal law involving fraud; or
- (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Applicant or his employer had submitted a Motor Vehicle Salesperson Application to the Division on or about April 12, 2011. The Applicant had signed and dated the application as of March 14, 2011. Additionally, the date with the signature from the representative for the employer showed March 24, 2011. Question number two of the application asks if the Applicant has “been convicted of any misdemeanors or felonies in Utah or any other state,” in the past ten years. In response, the Applicant checked the box indicating YES, and in the space provided, the Applicant wrote, “Misdemeanor-DUI, Felony-Comm fraud (plea in abeyance-to be dismissed 12/31/11)”

After receiving the Motor Vehicle Salesperson Application the Division pulled court records and determined that the Applicant had plead in abeyance to 2nd degree felony communications fraud on December 6, 2010. The Court documents indicate that the plea in abeyance would be for a minimum of 36 months, but the case could be dismissed after 18 months if the Applicant paid in full the \$\$\$\$ in restitution. It appears from this record that this charge could not be dismissed in December 2011 as stated by the Applicant on the application. In addition to this conviction, on April 1, 2011, the Applicant also pled in abeyance to 3rd degree felony possession or use of a controlled substance. Although the disposition date of the charge had been April 1, 2011, the offense date indicated in the court history showed June 1, 2009. The Applicant points out that when he had filled out the application he had not yet been convicted on this charge and he still had not yet been to his final court date. In this case the guilty plea was held in abeyance for 12 months during which time the Applicant was to complete 80 hours of community service and pay \$\$\$\$ in court costs.

It was the Division’s position that Utah Code §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and specifically identifies as “reasonable

cause” both violations of the law involving controlled substance and fraud. The representative for the Division also indicated making a false statement on the application was cause for denial or suspension of a license, pointing out that the controlled substance conviction was not listed. However, as noted above, the date that both the Applicant and the representative for the employer had signed the application was prior to the disposition date of the controlled substance charge. The application form does ask only for convictions.

The Applicant explained that he had been unemployed for two years after his former employer went out of business and the general down turn in the economy. He had been excited to have the opportunity to start working again when he was hired at DEALERSHIP. He had disclosed the felony fraud plea in abeyance on the application form and he states that he had discussed the plea in abeyance with a supervisor for DEALERSHIP who indicated he did not see it as an impediment to his employment. He also stated that he was continuing to pay a monthly restitution payment on the fraud charge and he was hoping to get that paid off as soon as possible so that the fraud conviction would be dismissed. He did indicate that the State had offered a plea deal, whereby he would plead to a class A misdemeanor on the fraud charge instead of a felony, but he was concerned this would stay on his record, while with the plea in abeyance to the felony count the conviction could eventually be dismissed completely.

Upon review of the information presented, the license should be denied at this time. The Commission has previously determined that a plea in abeyance is considered to be a conviction until such time as the case is dismissed.¹ Because the applicant had not yet been convicted of the drug related charge at the time he filled out the application, the Commission does not consider the failure to disclose this crime to be a false statement on an application. However, now that this conviction has occurred, it may be considered in whether or not the license should be issued. On that basis, the Applicant has two recent convictions, one involving fraud and one involving a controlled substance. During the 12 month or 18 to 36 month abeyance periods respectively, he is still under the court’s supervision. Utah Code §41-3-209 requires that the license be denied.

Jane Phan
Administrative Law Judge

¹ See Utah Tax Commission Appeal Nos. 05-1502 & 06-1399.

DECISION AND ORDER

Based on the foregoing the Commission denies this appeal. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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